

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1787 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NADODA ARJUNBHAI GHEMARBHAI

Versus

RANASHRI KARUNBHA VERUBHA SINCEDEASED BY HEIRS

Appearance:

MR ARUN H MEHTA for Petitioner

MR GM AMIN for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/10/1999

ORAL JUDGEMENT

1. Unsuccessful party - petitioner herein in the proceedings taken up under the provisions of Saurashtra Land Reforms Act, 1951, by this petition under Article 226 of the Constitution of India is challenging the order of the Gujarat Revenue Tribunal, Ahmedabad dated Nil, 1983 passed in Revision Application Nos.TEN.B.A.452 and 453 of 1980.

2. Facts of the case in brief, as per the petitioner, are that, he is the brother of one Bhavan Ghemarbhai who died without leaving any heirs and legal representatives, and as such he inherited all his properties. Deceased Bhavan Ghemarbhai was tenant of various agricultural lands owned by Girasdars who are respondents herein. He was also in possession of residential premises with vada land attached thereto, belonging to said Girasdars. Saurashtra Land Reforms Act, 1951 was enacted by the then State Legislature of Saurashtra to regulate the relationship between the Girasdars and tenants. After the said Act came into force, deceased Bhavan Ghemarbhai filed form No.11 on 29.1.1952 in respect of agricultural land admeasuring 22 acres, 1 guntha and also in respect of residential house and vada land. This application filed by the deceased Bhavan Ghemarbhai was registered as Case No.80/52. The Mamlatdar vide its order dated 4.3.1955 granted certificate for the land bearing survey numbers (agricultural lands). The petitioner applied to the Mamlatdar for giving him certificate for residential and vada land. This application of the petitioner was found favoured with the Mamlatdar and he under his order dated 2.9.1974 ordered for grant of certificate in respect of residential and vada land also. This order of the Mamlatdar was taken up in appeal by the respondents before the Deputy Collector who confirmed this order. After the decision of the appellate authority, a certificate for residential and vada land was issued in the name of the petitioner by the Mamlatdar. It is the case of the petitioner that this has been done by the Mamlatdar on his application to correct the omission which was there in the earlier certificate dated 3.3.1955 granted by the Mamlatdar to him in respect of the survey numbers. It is stated to be additional certificate by the Mamlatdar to the petitioner. The respondents taken up the matter in the revision before the Gujarat Revenue Tribunal, Ahmedabad and under the impugned order, the Revenue Tribunal allowed the same and set aside the orders passed by the Mamlatdar as well as Deputy Collector and certificate which has been ordered to be issued in favour of the petitioner for residential and vada land was quashed and set aside. Hence, this Special Civil Application in this court under Article 227 of the Constitution of India, by the petitioner.

3. Learned counsel for the petitioner contended that the learned Tribunal has committed serious error of jurisdiction in entertaining and accepting the revision application filed by the Girasdars - respondents in the

matter. It is a case where omission or mistake earlier committed by the Mamlatdar in passing of the order has been corrected on the application of the petitioner. In his submission, it is not a review of the order as what the Tribunal has held. It is a correction of the mistake and/or omission.

4. Mr.Mehta, learned counsel for the petitioner submits that the petitioner originally applied for certificate in respect of agricultural land, residential and vada land. While making the order an apparent mistake or error has been made and as a result thereof, in certificate only mention is of the agricultural lands. It is true that in the civil litigation the petitioner lost upto this court and from the judgment of this court, it is clear that this court has decided against him only on the ground that the occupancy certificate issued by the Mamlatdar under the order dated 4.3.1955 was only for agricultural lands and therefore the petitioner inclined to occupy the residential and vada land and what it amounts to trespass. In the occupancy certificate there is no mention of these two properties.

5. It has next been contended that, the Mamlatdar has exclusive jurisdiction to decide re: rights of the Girasdars and tenants under the Act, 1951 and the reference has been made by him to Section 46 thereof.

6. Mr.Mehta, learned counsel for the petitioner further contended that, in Section 46 of the Act, 1951, the word "may" is used, but the fact that jurisdiction of the civil court is barred, it has to be read "shall". The Mamlatdar is required to determine various questions enumerated in Clause (a) to (o) of the said Section and he is under the obligation to decide the question whether the petitioner was tenant of the dwelling houses and the land appurtenant thereto and necessary for its enjoyment from which the tenant could not be evicted in view of the provisions of Section 14 of the Act.

7. Reference has also been made by Mr.Mehta, learned counsel for the petitioner to the provisions of Section 28 of the Act, which as per his submission, confers statutory rights on tenants.

8. Concluding his submission Mr.Mehta, learned counsel for the petitioner submits that the Mamlatdar is competent to decide what earlier through mistake he has not decided, on the second application made by the petitioner and bring this omission or error to his notice. This application, in fact, was not an

application for review of the earlier order, but to draw attention of the authority to his error or mistake committed or omission left out in the earlier order and omission or mistake on his part, is bound to be rectified by him holding further inquiry if necessary and passing the order accordingly.

9. Mr.Mehta, learned counsel for the petitioner submits that suo motu the Mamlatdar could have rectify this error, mistake or omission and precisely what has been done when the same was brought to his notice.

10. Mr.G.M.Amin, learned counsel for the respondents contended that, it is a case where the petitioner though has lost in civil court, has got the order in his favour from the Mamlatdar. The Tribunal has not committed any error of jurisdiction in passing of the impugned order taking it to be a case of review of the order by the Mamlatdar.

11. Mr.Amin, learned counsel for the respondents submits that, review is a creature of statute and where the review is not provided under the statute, the authority has no jurisdiction to review its earlier order.

12. Mr.Amin, learned counsel for the respondents submits that, earlier order has been passed by the Mamlatdar on 3.3.1955. The application was filed by the petitioner on 13.7.1971 which is an attempt on his part to get favourable order after he lost the battle in the civil courts. The application has been filed in the very case. The certificate has been issued for residential and vada land and as a result thereof, in substance, it is an addition of the property in the certificate initially issued. It amounts to a review of its own earlier order. Decision of this court in Second Appeal is binding on the petitioner and when this court has not granted any relief in favour of the petitioner, he cannot take relief now by this trick played by him. Reopening of the matter on the application of the petitioner by the Mamlatdar is wholly without any authority of law. It is a review of the order and not a correction as what is stated, of the accidental error or mistake or omission in the earlier order.

13. In the facts of this case, Mr.Amin, learned counsel for the respondents submits that, the Tribunal has not committed any error to hold that the Mamlatdar has no power or authority to reopen and review the order made by it earlier.

14. In his submission, even if it is taken that the petitioner applied for certificate for residential and vada land and when the certificate has not been granted for these two properties, it is a case of refusal to grant certificate, and if, he has really any right, title or interest in those properties, appropriate remedy should have been taken by him against the order of the Mamlatdar. That order become final as it has attained the finality and it could not be permitted to be reopened on the application of the petitioner and that too after civil court has decided the matter against him.

15. Lastly, it is contended that, civil court has decided that the petitioner is not in possession of the land in dispute. How far it is justified for him to file such application and how far it is open to the Mamlatdar to pass this order.

16. I have considered rival contentions raised by the learned counsel for the parties.

17. Before the Tribunal two revision applications were filed being Revision Application Nos.TEN.B.A.452 and 453 of 1980. First revision application is filed by the applicant - Ranashri Karunbha Verubha and the second revision application is filed by the applicant Ranashri Akhubha Bapubha and heirs of Ranashri Andubha Bapubha. Lands are situated in village Latuda, Taluka Wadhwan, District Surendranagar. The applicant in the revision application No.452/80 Ranashri Karunbha Verubha had plot in village aforesaid admeasuring 200 sq.yard to which Arjanbhai Ghemarbhai claims to be a vada land of deceased Bhavan Ghemarbhai. Ranashri Karunbha filed civil suit against Arjanbhai Ghemarbhai being Civil Suit No.241/63 in the court of Civil Judge (Senior Division), Surendranagar for the grievance that Arjanbhai Ghemarbhai is making illegal construction on the land. In his case, he became the owner of the land by virtue of the partition. This land is part of survey No.24 and he is in possession of the suit land as owner. The petitioner herein made a trespass and was found to have started digging on 18.10.1963. A criminal complaint has also been filed by Ranashri Karunbha against the petitioner. This claim of Ranashri Karunbha was disputed by the petitioner. Defence is taken that, his deceased brother was cultivating the land as Girasdars and was in possession of the suit land for the last so many years. After his death he is in possession of the house and vada land.

18. The application has been filed by the petitioner to get occupancy certificate for the suit land as well as sim land. His application has been granted for agricultural land by the Mamlatdar earlier. In respect of the house and vada land certificate was not granted to the petitioner. The learned trial court has dismissed the suit, though held that Ranashri Karunbha is owner of the land, but was not found in possession of the land. Further finding is recorded that the defendant petitioner herein has not committed any trespass. As a result of this finding, permanent injunction as prayed for by Ranashri Karunbha was not granted in the suit. Dissatisfied with the judgment and decree of the trial court, Ranashri Karunbha filed Regular Civil Appeal No.39/64 in the court of District Judge, Surendranagar and the same was also dismissed. He preferred Second Appeal No.1065/65 in this court which was allowed on 7.7.1971. Copy of the judgment of this court in the Second Appeal is on the record of this Special Civil Application and from this judgment it is clear that Ranashri Karunbha was appellant in the Second Appeal. He claimed himself to be a owner of the suit land and he got that land on partition. His case was that the petitioner herein is a trespasser on his land. This court has held in the Second Appeal that both the courts have committed an error on law in refusing to give injunction restraining the defendant from making any construction simply on the ground that the plaintiff had failed to prove that the defendant had committed trespass on the suit land. The court has further said, even assuming for the sake of argument that the defendant was in possession of the suit land and that he was a tenant thereof, even a tenant could not be permitted to make construction of permanent nature so as to prejudice the right of the owner. This court held that, defendant petitioner herein is unable to show that he was a tenant of the suit vada land. The evidence led by him indicates that the suit vada land was being used for such petty use as storing fodder. Such a user would not necessarily create any right, title or interest in the suit vada. The possession being permissible, it was open to the plaintiff to stop it at any time. This court held that, there is no evidence to show that the defendant was put in possession of the suit vada as a tenant by the Girasdar. His brother was a tenant so far as agricultural land was concerned. Even from the evidence of the defendant, it clearly transpires that though he had made an application for issue of occupancy certificate with regard to the agricultural land, the house and the suit land, the occupancy certificate was issued with regard to the agricultural land only. The

court in these facts held that the say of the defendant that he was a tenant of the suit vada land apparently was not accepted by the competent authority. Both the civil courts below concurrently held that the respondents herein being Girasdars of the village was owner of the suit vada. From the judgment of this court in the Second Appeal, it is clear that, brother of Arjanbhai Ghemarbhai who claimed to be a tenant of the house and vada land was not declared to be a tenant of the said house and vada land, and that no occupancy certificate was issued by the Mamlatdar for these properties. Arjanbhai Ghemarbhai - petitioner herein claims to be heir of the deceased brother and is bound by the decision of this court.

19. The larger issue raised by the learned counsel for the petitioner, whether it is a case of review of the judgment by the Mamlatdar or an order of correction or rectification of an error or mistake in the earlier judgment needs not to be decided by this court for the reasons that the application filed by late Bhavan Ghemarbhai for occupancy certificate in respect of three properties agricultural land, house and vada land has been decided in the year 1955 and occupancy certificate was granted only for agricultural land. Two other prayers made are in the facts of this case are to be taken by necessary implication to have been rejected. If, in case what the learned counsel for the petitioner contends that, it was a case of error or mistake or omission in the order made in the year 1955, why he has not made necessary application then and there rather to wait for making this application after more than 18 years, and that too, when this court has decided the second appeal against him. This court in Second Appeal has not accepted the case of the petitioner on the ground that, in respect of the land in dispute, occupancy certificate has not been granted by the Mamlatdar. The petitioner after he lost in this court in Second Appeal by taking it to be a case of correction or mistake or omission in the earlier certificate of the competent authority filed an application and the Mamlatdar has granted the relief which is in the facts of this case is totally uncalled for. The petitioner has put defence in the civil court that he has been granted occupancy certificate for the disputed land which was not granted. There is no ambiguity or mistake or any error in the certificate granted in favour of the petitioner by the Mamlatdar in the year 1955 and this order of the Mamlatdar has not been challenged by the petitioner. It has attained the finality. It is not the case where it could have been reopened by the Mamlatdar on the application of the petitioner after about 18 years in the

facts of this case. Leaving apart the question whether power of review is vested with the Mamlatdar or not, question does not arise to reopen the matter which has attained the finality after 18 years.

20. There is yet another reason on which this claims of the petitioner cannot be entertained. The form submitted by late Bhavan Ghemarbhai for occupancy certificate was made against Bapubha Gagubha, whose heirs are applicants of the Revision Application No.TEN.B.A.453/80. When this specific claim was made for occupancy certificate in respect of the house and vada land, the learned Mamlatdar if he would have granted the claim of deceased Bhavan Ghemarbhai in respect of the house and vada land, he should have certainly included the house and vada land in the occupancy certificate issued by him which is at page 9 of the Mamlatdar's file. This land in dispute as per the decision of the Civil Court is of the ownership of Ranashri Karunbha Verubha. The petitioner otherwise also could not have got the certificate of this land against this person as he has no cause to pray for the same against him. The judgment of the Gujarat Revenue Tribunal in this case does not suffer from any illegality or it cannot be said to be perverse. It is the case where the petitioner made an attempt to nullify the decision of this court given in the Second Appeal. By this device of taking certificate from the Mamlatdar, what this court has decided interse parties, their rights and dislodged the claim of the petitioner on the ground that, occupancy certificate is not there in his favour in respect of the house and vada land. An attempt is made to nullify the judgment of this court. This is not permissible either to the petitioner or Mamlatdar.

21. There were two applicants and two revision applications before the Gujarat Revenue Tribunal, but the petitioner has filed only one petition. One petition against a judgment given in two separate revision applications, otherwise also not maintainable. However, I do not consider it to be appropriate to dismiss this writ petition only on this ground for the reasons that, otherwise also, I do not find any merits in the matter.

22. This court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The exercise of the powers by this court under Article 227 of the Constitution are to be restricted to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where the grave injustice

would be done unless this court interfere in the matter.

23. The Act of 1951 is a special legislation governing relationship of Girasdars and tenants. The legislature in its wisdom has not provided any appeal or revision to this court against the judgment given in this matter by the Gujarat Revenue Tribunal. Obviously, object is to give finality to the decision of the revisional authority. The Gujarat Revenue Tribunal in the facts of this case and in the presence of the judgment in the Second Appeal, has rightly interfered in the matter and occupancy certificate which has been granted by the Mamlatdar for this land has rightly been quashed and set aside. This order of the Gujarat Revenue Tribunal does not call for any interference under Article 227 of the Constitution and accordingly this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote, J.)
(pathan)